to conditions named therein. One provision was that if the assessments were not paid to the clerk of the local camp at a given time the certificate should be null and void. The by-laws were made a part of the contract, and they provided that if the payments were not made by the required time the member would become suspended. The by-laws further provided that the clerk of the local camp was the agent of the local camp and not of the head camp, that such agent had neither power nor authority to waive any of the conditions regarding payments, and that a suspended member might become reinstated by showing proper certificates and receiving the approval of certain head officers. S. became insane in December, 1901, and an assessment was due January 1, 1902; he was notified according to the by-laws that the assessment had been made and was due. His divorced wife wrote and asked the clerk of the local camp to notify her when assessments were due, and the clerk replied that he would do so, but failed to notify her that the payments were due and unpaid, and S. was suspended by the company for failure to pay. *Held,* that the agreement with the local clerk was not binding on the head camp, and that the insanity of S. would not excuse the failure to make the payments. *Sheridan* v. *Modern Woodmen of America* (1906), — Wash. —, 87 Pac. Rep. 127.

The notice sent out for the assessment due January 1, 1906, was sufficient under the by-laws, but the plaintiff claims that the agreement of the clerk to notify the divorced wife was a waiver by the company of the provision of the by-laws. That it is not see *Modern Woodmen* v. *Tevis,* 117 Fed. 369. That case held that a waiver by a local clerk of conditions exactly similar to the case under discussion was not binding upon the association. A principal may limit the authority of his agent, and when that is done the agent cannot bind the principal beyond the limits of the contract. *Assurance Co.* v. *Bldg. Asso.,* 183 U. S. 308; *Elder* v. *Grand Lodge,* 79 Minn. 468; *Harvey* v. *Grand Lodge,* 50 Mo. App. 472. Plaintiff's contention that the insanity of the insured is an excuse for failure to pay the assessments is met by *Pitts* v. *The Hartford Life, etc., Co.,* 66 Conn. 376, 50 Am. St. Rep. 96. The court in that case, speaking of a contract requiring payments by a specified time or a forfeiture of the policy, says, "While, as a general rule, where the performance of a duty required by law is prevented by inevitable accident, without fault of the party, the default will be excused, yet when a person, by express contract, engages absolutely to do an act not impossible or unlawful at the time, neither inevitable accident, nor other unforeseen contingency not within his control, will excuse him, for the reason that he might have provided against them by his contract." See also, *Wheeler* v. *Insurance Co.,* 82 N. Y. 543; *Hawkshaw* v. *Insurance Co.,* 29 Fed. 770; *Yoe* v. *Ins. Co.,* 63 Md. 86.

INSURANCE—RIGHT OF INSURED TO CHANGE BENEFICIARY—EFFECT OF RECEIPT OF APPLICATION TO CHANGE AFTER DEATH OF INSURED.—One S. was a member of the Order of the Knights of the Maccabees. His wife was the beneficiary in a policy issued by the order to him. The by-laws of the organization provided that the beneficiary might be changed upon receipt of proper application. S. and his wife separated and S. changed his domicil. Wishing

to make his brother beneficiary he mailed a proper application of change to the order at his former domicil, which was not received until after his death. The brother of S. seeks to enforce his rights as beneficiary upon the ground that a court of equity will decree that as done which ought to be done, and that S. having in his lifetime done all that he could to effect the change it will be considered as having been made. *Held,* (1) that the insured might change his beneficiary upon compliance with the by-laws; (2) that the deceased constituted the mail his agent and that he assumed the risk for failure to deliver; (3) that the rights of the wife as beneficiary vested immediately upon the husband's death, and that they could not be divested after his death. *Knights of the Maccabees of the World* v. *Sackett et al.* (1906), — Mont. —, 86 Pac. Rep. 423.

Plaintiff in this case relied upon the case of *Royal Conclave* v. *Cappella,* 41 Fed. 1, where it was held that if the deceased had in his lifetime done all in his power to effect a change that a court of equity would decree that as done which ought to be done, and treat the facts as though the new certificate had been issued. That case may de distinguished from the one under discussion by reason of the by-laws in the latter case, which provide that the beneficiary can only be changed upon a delivery to the association of the old certificate. That the beneficiary may be changed and that the first beneficiary does not acquire rights which cannot be divested, see *Fink* v. *Fink,* 171 N. Y. 616; *Royal Conclave* v. *Cappella,* 41 Fed. 1; *Jory* v. *Supreme Council,* 105 Cal. 20. Deceased had elected the mail as his agent, and so is responsible for the delay. *Peabody* v. *Satterlee,* 166 N. Y. 174; *McCarkle* v. *Benevolent Asso.,* 71 Tex. 149. Wife's rights as beneficiary were not divested until the application had been received, because the by-laws provided for its receipt. *Fink* v. *Fink,* 171 N. Y. 616; *Jory* v. *Supreme Council,* 105 Cal. 20.

LANDLORD AND TENANT—CONDITION AND USE OF PREMISES—LANDLORD'S LIABILITY FOR INJURIES.—Where the child of a tenant occupying a flat in an apartment house fell through a sky-light and was killed by reason of the dangerous condition of a water closet, and where the existence of a contract express or implied between the landlord and tenant as to whether the water closet was for the common use of the tenants or for the exclusive use of one of the tenants was a question for the jury, *Held,* that the landlord was not liable, though the closet was used by other tenants than the one entitled thereto with the landlord's knowledge, acquiescence or approval. *Hess* v. *Hinkson's Adm'r.* (1906), — Ky. —, 96 S. W. Rep. 436.

The jury found for the plaintiff. The reversal is based upon the failure of the trial court to instruct the jury that whether or not the water closet was for the common use of the tenants must depend upon a contract express or implied. It is conceded that such a contract may arise by implication. Under the instructions the jury had the right to, and presumably did, pass upon the question in arriving at their verdict. But aside from the contractual relation an additional burden is placed upon a landlord when he suffers dangerous things to remain on his premises, attractive to children, where they are accustomed to come. THOMPSON ON NEGLIGENCE, p. 304; *Powers* v. *Harlow,* 53